

Apr 07, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KITTITAS RECLAMATION
DISTRICT, a municipal corporation,

Plaintiff,

v.

TETRA TECH, INC., a foreign
corporation,

Defendant.

No. 1:19-cv-03252-SMJ

**ORDER DENYING MOTION TO
REMAND FOR LACK OF
SUBJECT MATTER
JURISDICTION**

Before the Court, without oral argument, is Plaintiff Kittitas Reclamation District's Motion to Remand for Lack of Subject Matter Jurisdiction, ECF No. 2. Plaintiff asserts this case must be remanded because the contract giving rise to the dispute includes a forum selection clause establishing that Kittitas County, Washington Superior Court is the appropriate venue. *Id.* Defendant Tetra Tech, Inc. opposes the motion, arguing that (1) a separate contract governs and does not establish a forum for litigation, and (2) the forum selection clause does not deprive this court of subject matter jurisdiction. ECF No. 5. Having reviewed the stipulated pleading and the file in this matter, the Court is fully informed and denies the motion.

1 Plaintiff filed this action in Kittitas County Superior Court asserting claims
2 against Defendant for breach of contract and negligence. ECF No. 1-1. In the
3 Complaint, Plaintiff asserts the parties entered into a Professional Services
4 Consulting Agreement (“2016 Agreement”), contracting for Defendant to design,
5 manage, administer, and coordinate a project to line portions of an existing dirt
6 canal. *Id.* at 4–5. Defendant removed the action to this Court. ECF No. 1. Plaintiff
7 asserts this action must be remanded to the state court because the 2016 Agreement
8 contains a forum selection clause identifying the appropriate forum as the Superior
9 Court of the State of Washington situated in the county in which Plaintiff is located.
10 ECF No. 2 at 4. Defendant asserts a separate contract executed in 2017 (“2017
11 Agreement”) governs this dispute and does not contain a forum selection clause and
12 that the forum selection does not deprive the Court of jurisdiction. ECF No. 5 at 2.
13 Plaintiff asserts the 2017 Agreement does not replace or supersede the 2016
14 Agreement and that the 2017 Agreement incorporates the same forum selection
15 clause as the 2016 Agreement. ECF No. 14 at 1–2.

16 A forum selection clause does not deprive a federal court of subject matter
17 jurisdiction. *Kamm v. ITEX Corp.*, 568 F.3d 752, 754 (9th Cir. 2009) (citing *M/S*
18 *Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972)). When a valid forum
19 selection clause mandates venue in a non-federal forum, a motion to dismiss for
20

1 *forum non conveniens* is the appropriate method to enforce the clause. *Atlantic*
2 *Marine Constr. Co. v. United States Dist. Court*, 571 U.S. 49, 60 (2013).

3 Plaintiff's motion to remand relies solely on the grounds that the 2016
4 Agreement's forum selection clause deprives this court of jurisdiction over the
5 action. ECF No. 2. However, the Ninth Circuit has expressly rejected this argument.
6 *M/S Bremen*, 407 U.S. at 12. As such, regardless of whether the 2016 Agreement
7 or 2017 Agreement contains a forum selection clause, this Court is not deprived of
8 subject matter jurisdiction and the motion to remand on that basis is denied.


9 Accordingly, **IT IS HEREBY ORDERED:**

10 Plaintiff's Motion to Remand for Lack of Subject Matter Jurisdiction,

11 **ECF No. 2**, is **DENIED**.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
13 provide copies to all counsel.

14 **DATED** this 7th day of April 2020.

15 
16 SALVADOR MENDOZA, JR.
United States District Judge